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BRIGHTVITE SDN BHD v. PANTAI TOWERS MANAGEMENT CORPORATION & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
NALLINI PATHMANATHAN JCA
B BADARIAH SAHAMID JCA
[CIVIL APPEALS NO: W-02(NCVC)(A)-433-03-2016 &
W-02(NCVC)(A)-434-03-2016]
11 JUNE 2018

C ***LAND LAW:*** *Strata title – Payment – Management fees – Claim for management fees due and owing by original owner from subsequent purchasers – Whether purchasers liable for management fees levied and unpaid after acquisition of units – Whether purchasers obtained certificate certifying specific sum due and owing and recoverable from management corporation – Whether Strata Titles Act 1985* D *provided for debt to be divisible between proprietor and successor-in-title – Whether debt in respect of management fees recoverable either from proprietor or its successor-in-title – Strata Titles Act 1985, s. 45(3), (4), (5) & (6)*

The respondent ('management corporation'), established as the management corporation of Pantai Towers, comprised of a block of 56 condominium E units. Originally, Metroplex Bhd (in liquidation) owned a total of 30 condominium units. It incurred management fees owing to the management corporation for the period from October 2007 to September 2008 in respect of the 30 units. Therefore, the management corporation filed a suit and obtained judgment against Metroplex for the outstanding management fees F due and owing. However, Metroplex had been wound up before that and a liquidator was appointed. The management corporation therefore filed a proof of debt form for a sum of RM931,786.39. The proof of debt form remained unadmitted and unpaid. Prior to the winding-up of Metroplex, Brightvite Sdn Bhd ('Brightvite') acquired five of the condominium units. G The management corporation only realised this at the first creditors' meeting when they were informed by the liquidator of Metroplex. Subsequently, the remaining 25 units were sold to Benchmark Sdn Bhd ('Benchmark') as approved by an order of the High Court. The majority shareholder of Benchmark was one Madam Lim Siew Kim who was, at all material times, a director of Metroplex. The management corporation claimed, against H Brightvite and Benchmark, for the management fees in respect of the condominium units purchased from Metroplex. The High Court held that Brightvite and Benchmark were liable for the full management fees due and owing, which included the portion of debt incurred during the time when Metroplex was the owner of the condominium units, based on s. 45(5) and

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(3) of the Strata Titles Act 1985 ('the Act'). Brightvite and Benchmark appealed against the decision maintaining that they were only liable for the management fees levied and unpaid after they had acquired their respective units.

Held (dismissing appeals)
Per Nallini Pathmanathan JCA delivering the judgment of the court:

(1) Section 45(4) allows for an application, on behalf of a proprietor of a parcel or by a prospective purchaser of a parcel offered for sale, of the quantum payable whereupon the management corporation is to issue to that person a certificate certifying the amount determined pursuant to the amounts set or agreed upon at the general meeting, as being the contributions required of the proprietor. The section enables the prospective purchaser to be cognisant of the total debt, if any, outstanding as being a further quantum to be considered in negotiating and finalising the purchase price. In the instant case, at least one of the entities, Benchmark, ought to have been cognisant of the debt as its majority shareholder, Madam Lim Siew Kim was, at all material times, a director of Metroplex. (paras 24, 36 & 37)

(2) However, neither Benchmark nor Brightvite sought any clarification or certificate as prospective purchasers. They only sought to raise this issue in response to the claim by the management corporation. Hence, the trial judge did not err in concluding that the allegation of failing to levy contributions in proportion to the share units was not *bona fide* and was very much an afterthought. There was accordingly no basis for appellate intervention. (para 25)

(3) Pursuant to s. 45(5), both the registered proprietor of a unit as well as any purchaser, who is to be duly registered as a proprietor, may be held liable for a debt arising as a consequence of a failure to pay management fees due and owing. The section clearly refers to one and the same debt, that debt being the sum outstanding as management fees. The section does not provide that the debt is divisible between the proprietor and the successor-in-title in accordance with the point at which the acquisition took place. (paras 28 & 31)

(4) The provisions of s. 45(5) and (6) clearly provide that a debt in respect of management fees for services rendered are separately recoverable from either the proprietor or its successor-in-title. Subsection 6 clearly provides that a 'purchaser to be duly registered as a proprietor' is to be considered a 'proprietor' for the purposes of recovery of such a debt.

Brightvite and Benchmark were liable for the debts, notwithstanding that Metroplex was the registered proprietor for some or most of the period in respect of which the debt arose. (para 34)

(5) The filing of the claim *vide* the proof of debt form did not preclude the management corporation from seeking recovery against the appellants, particularly, when the debt remained unpaid to date *vis-a-vis* Metroplex. The liquidator had taken the position that the claim was still subject to verification and confirmation. The filing of the proof of debt form against Metroplex did not operate as an estoppel against recovery of the debt from the appellants in light of the express statutory provisions of s. 45(5) and (6) of the Act.

(6) The payment of management charges amounted to a running account such that limitation did not come into play. (para 44)

Bahasa Malaysia *Headnotes*

Responden ('perbadanan pengurusan'), ditubuhkan sebagai perbadanan pengurusan Pantai Towers, yang terdiri daripada blok 56 unit kondominium. Pada asalnya, Metroplex Bhd (dalam penggulungan) memiliki 30 unit kondominium. Metroplex menanggung fi pengurusan yang tertunggak kepada perbadanan pengurusan untuk tempoh Oktober 2007 hingga September 2008 berkaitan 30 unit tersebut. Oleh itu, perbadanan pengurusan memfailkan guaman dan memperoleh penghakiman terhadap Metroplex untuk fi pengurusan tertunggak dan terhutang. Walau bagaimanapun, Metroplex digulung sebelum itu, dan penerima dilantik. Perbadanan pengurusan, oleh itu, memfailkan borang bukti hutang untuk jumlah RM931,786.39. Borang bukti hutang kekal tidak diakui dan tidak dibayar. Sebelum penggulungan Metroplex, Brightvite Sdn Bhd ('Brightvite') memperoleh lima daripada unit-unit kondominium tersebut. Perbadanan pengurusan hanya menyedari perkara ini semasa mesyuarat pertama pemiutang-pemiutang di mana mereka dimaklumkan oleh pelikuidasi Metroplex. Kemudian, baki 25 unit dijual kepada Benchmark Sdn Bhd ('Benchmark') seperti yang diluluskan melalui perintah Mahkamah Tinggi. Pemegang saham majoriti Benchmark ialah seorang bernama Madam Lim Siew Kim yang, pada masa material, seorang pengarah Metroplex. Perbadanan pengurusan menuntut, terhadap Brightvite dan Benchmark, fi pengurusan berkaitan unit-unit kondominium yang dibeli daripada Metroplex. Mahkamah Tinggi memutuskan Brightvite dan Benchmark bertanggungan membayar keseluruhan fi pengurusan tertunggak dan terhutang termasuk bahagian hutang yang ditanggung semasa Metroplex adalah pemilik unit-unit kondominium, berdasarkan s. 45(5) dan (3) Akta Hakmilik Strata 1985 ('Akta'). Brightvite dan Benchmark merayu terhadap

keputusan tersebut mengekalkan bahawa mereka hanya bertanggungan untuk fi pengurusan yang dilevi dan tidak berbayar selepas mereka memperoleh unit masing-masing.

Diputuskan (menolak rayuan-rayuan)
Oleh Nallini Pathmanathan HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 45(4) membenarkan permohonan, bagi pihak pemilik bahagian atau oleh bakal pembeli bahagian yang ditawarkan untuk jualan, kuantum yang perlu dibayar, dan perbadanan pengurusan perlu mengeluarkan kepada pihak tersebut satu sijil mengesahkan jumlah yang ditentukan menurut jumlah yang ditetapkan atau dipersetujui dalam satu mesyuarat umum, sebagai sumbangan yang diperlukan daripada pemilik. Seksyen itu membolehkan bakal pembeli mengetahui jumlah hutang, jika ada, yang tertunggak sebagai kuantum selanjutnya yang perlu dipertimbangkan dalam penawaran dan pemutusan harga belian. Dalam kes ini, sekurang-kurangnya sebuah entiti, Benchmark, perlu mengetahui tentang hutang tersebut kerana pemegang saham utamanya, Madam Lim Siew Kim adalah, pada masa material, seorang pengarah Metroplex.

(2) Walau bagaimanapun, Benchmark mahupun Brightvite tidak memohon apa-apa penjelasan atau sijil sebagai bakal pembeli. Mereka hanya membangkitkan isu ini sebagai jawapan pada tuntutan perbadanan pengurusan. Oleh itu, hakim bicara tidak khilaf apabila memutuskan dakwaan kegagalan melevikan sumbangan mengikut bahagian unit bukan *bona fide* dan satu fikiran semula. Oleh itu, tiada asas untuk campur tangan rayuan.

(3) Menurut s. 45(5), kedua-dua pemilik berdaftar unit dan mana-mana pembeli, yang akan didaftar sebagai pemilik, boleh dipertanggungkan untuk hutang yang timbul daripada kegagalan membayar fi pengurusan tertunggak dan terhutang. Seksyen tersebut jelas merujuk kepada hutang yang sama, iaitu jumlah tertunggak sebagai fi pengurusan. Seksyen tersebut tidak memperuntukkan hutang tersebut boleh dibahagikan antara pemilik dan pengganti hak milik mengikut peringkat di mana pemerolehan berlaku.

(4) Peruntukan-peruntukan s. 45(5) dan (6) jelas memperuntukkan bahawa hutang berkaitan fi pengurusan untuk perkhidmatan yang diberi secara berasingan boleh diperoleh semula daripada sama ada pemilik atau pengganti hak milik. Subseksyen 6 jelas memperuntukkan bahawa

'pembeli yang akan didaftar sebagai pemilik' perlu dianggap 'pemilik' untuk tujuan mendapatkan balik hutang tersebut. Brightvite dan Benchmark bertanggungan untuk hutang-hutang, walaupun Metroplex adalah pemilik berdaftar semasa sebahagian atau sebahagian besar tempoh hutang tersebut timbul.

(5) Pemfailan tuntutan melalui borang bukti hutang tidak menghalang perbadanan pengurusan daripada memohon pengembalian terhadap perayu-perayu, khususnya, apabila hutang itu kekal tidak berbayar sehingga kini berhubung Metroplex. Kedudukan yang diambil pelikuidasi adalah tuntutan itu masih tertakluk pada pengesahan dan pengakuan. Pemfailan borang bukti hutang terhadap Metroplex tidak beroperasi sebagai estopel terhadap tindakan mendapatkan semula hutang daripada perayu-perayu berikutan peruntukan jelas s. 45(5) dan (6) Akta.

(6) Pembayaran bayaran pengurusan berjumlah pada akaun berterusan dan oleh itu, had masa tidak terpakai.

Case(s) referred to:

Andrew Loh & Anor v. Management Corporation Strata Title No 082 [1986] 1 LNS 72 HC ***(refd)***

De Tropicana Management Corporation v. South Malaysia Industries Bhd [2014] 1 LNS 364 HC ***(refd)***

Singapore Developments (Pte) Ltd v. Management Corporation Strata Title No 446 [1991] 2 SLR (R) 733 ***(refd)***

Sri Wangsaria Management Corporation v. Yeap Swee Oo @ Yeap Guan Cheng [2009] MLJU 1461 ***(refd)***

Legislation referred to:

Strata Titles Act 1985, ss. 39, 41A, 45(3), (4)(c), (d), (e), (f), (5), (6)(b), 55A

Land Titles (Strata) Act [Sing], s. 34(7)

For the appellant - Cecil Abraham, Malcolm Fenandez, Rishwant Singh & Mark Cheng; M/s C Sukumaran & Co

For the respondent - Cyrus Das, Peter Sklechy, Claudia Nah, T Naraendran & K Kamales; M/s Cheah Teh & Su

[Editor's note: Appeal from High Court, Kuala Lumpur; Originating Summons No: 24NCVC-1733-11-2014 (affirmed).]

Reported by S Barathi

JUDGMENT

Nallini Pathmanathan JCA:

Introduction

[1] These two appeals arise from the decision of the High Court dated 29 January 2016 allowing the claim brought by the plaintiff, Pantai Towers Management Corporation ('the management corporation') and the respondent here, against the two defendants, namely Brightvite Sdn Bhd, the first defendant ('Brightvite') who is the appellant in appeal number 433 and Benchmark Link Sdn Bhd, the second defendant who is the appellant in appeal number 434.

[2] The management corporation's claim *vide* originating summons against Brightvite and Benchmark (in each of the appeals) is for service charges, maintenance fees, quit rent, insurance premium payment and water charges ('management fees') in respect of condominium units purchased by the appellants from the previous owner, one Metroplex Berhad (in liquidation) ('Metroplex'). The two appeals, namely 433 and 434 were heard together.

[3] The learned High Court Judge determined the matter in favour of the management corporation ruling that Brightvite and Benchmark were liable for the full management fees due and owing. This sum included arrears of management fees that had accrued due prior to their acquisition of five and 30 condominium units respectively from Metroplex. In other words, a portion of the debt claimed by the plaintiff included management fees incurred during the time when Metroplex was the owner of the condominium units. The basis for such claim includes *inter alia* s. 45(5) and 45(3) of the Strata Titles Act 1985 ('the Act'). Brightvite and Benchmark appealed against the decision maintaining that they were only liable for management fees levied and unpaid after they had acquired their respective units.

Salient Facts

[4] The management corporation, the plaintiff, was established as the management corporation of Pantai Towers on 15 March 2005 by virtue of s. 39 of the Act. It comprises a block of 56 condominium units. Originally, Metroplex owned a total of 30 condominium units. It incurred management fees owing to the management corporation for the period from October 2007 to September 2008 in respect of those 30 units. On 27 August 2008, the management corporation filed a suit against Metroplex to claim the sum of RM159,146.23 being the outstanding management fees then due and owing. The management corporation obtained judgment against Metroplex on

A 9 October 2009. However, well before that, on 1 August 2008, Metroplex had been wound up and a liquidator appointed. The management corporation therefore filed a proof of debt form on 7 December 2012 for a sum of RM931,786.39. This comprised the management fees outstanding for the entire 30 units for the period from October 2007 until September 2012 B inclusive of the judgment debt. These fees remain unpaid to date. The proof of debt form remains unadmitted and unpaid.

[5] Prior to the winding up of Metroplex, Brightvite acquired five of the condominium units, although the sale was finally only concluded on 25 August 2012. This was unknown to the management corporation. The C latter only realised this for the first time at the first creditors' meeting held on 3 January 2013 when they were so informed by the liquidator of Metroplex.

[6] On 14 April 2013 the remaining 25 units owned by Metroplex were sold to Benchmark as approved by an order of the High Court dated 15 May D 2013. The majority shareholder of Benchmark is Madam Lim Siew Kim who was at all material times a director of Metroplex.

[7] The claim by the management corporation against Brightvite and Benchmark was for a total sum of RM1,080,95.16 being the apportioned maintenance charges owed to it from October 2008 until December 2014. E This is to be contrasted with the management corporation's claim against Metroplex which was for the period from October 2007 to September 2008.

[8] The breakdown of the amount owing is as follows:

(i) Brightvite – RM345,894.55; and

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(ii) Benchmark – RM762,974.97

[9] Neither entity sought to enquire of the management corporation whether there were any outstanding management charges owing in respect of their properties pursuant to s. 45(4) of the Act, prior to their acquisition of G the condominium units.

[10] On 2 July 2014, Metroplex wrote to the management corporation enclosing a cheque for the sum of RM99,518.17 forwarded by Brightvite as payment towards its portion of the outstanding management fees from June to August 2014. Brightvite took the position that it only owed management H fees to the management corporation from the date when the sale of the five units was concluded. The management corporation rejected the cheque maintaining that Brightvite was responsible for the entirety of the sum due and owing by Metroplex and not just from the date the sale was concluded.

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[11] Benchmark which acquired its 25 units pursuant to a court-sanctioned sale, could not take possession of the units as it was denied entry by the management corporation. Metroplex, through its solicitors, by letter dated 18 November 2011 confirmed that it would bear all management fees for Benchmark's units until vacant possession was given to Benchmark. Notwithstanding this the management corporation continued to demand the arrears of management fees for the period from October 2008 until April 2014 from Benchmark.

[12] Akin to Brightvite, Benchmark also took the position that it was not liable for management fees until it took vacant possession of the units.

[13] The management corporation then initiated claims from both Brightvite and Benchmark for the total sums stated in the PODF excluding the judgment fees together with management fees from October 2012 until December 2014.

The Decision Of The High Court

[14] The comprehensive judgment, crafted in Her Ladyship Dato' Rosnaini binti Saub's inimitable style, describes the core issue accurately as relating to the question of whether Brightvite and Benchmark are responsible for, or liable to pay, the outstanding management fees for their respective units prior to their acquisition of those units from Metroplex.

[15] One of the issues raised at what appears to be a late stage was that the plaintiff had not levied the management fees in accordance with, or in proportion to the share units. Her Ladyship found that there was "absolutely no evidence" to establish this contention. If there had been such a dispute then this should have been made known in writing to the management corporation well before the issuance of the writ. This would have accorded with s. 45(4) of the Act which provides for inquiries about any levy contribution due and owing in respect of their units. The management corporation would then have had to issue a certificate detailing the accounts and substantiating the sum claimed. There was no attempt to do so by Brightvite or Benchmark.

[16] The core issue she held, was their refusal to pay outstanding management fees prior to their becoming proprietors of the subject units. Prior to this they maintained that Metroplex was liable.

[17] On this issue, the learned judge held that Brightvite and Benchmark were the successors in title to the respective units. Section 45(5) of the Act allowed the management corporation to recover outstanding contributions levied under s. 45(3) of the Act either from the proprietor or successor in

A title. More specifically the learned judge found that both Brightvite and Benchmark fell within the purview of s. 45(6)(b) of the Act and were therefore liable for the sums claimed.

[18] Finally, Her Ladyship held that there was no confusion as to the period of time for which the management fees were due and owing. The
B management corporation's claim is for the period from October 2008 until December 2014. Its claim in the Sessions Court against Metroplex was for the period from October 2007 to September 2008. There was therefore no question of any form of overlapping claim as alleged by Benchmark and Brightvite.

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[19] The proof of debt form did not comprise any basis for a claim of estoppel against the management corporation. This, Her Ladyship held, was because the plaintiff was unaware of the sale of the units by Metroplex to the defendants. Moreover, the quantum claimed under the proof of debt form remained unpaid.

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[20] On the issue of limitation, the learned judge held that the accounts relating to management fees were running accounts (see *Sri Wangsaria management Corporation (supra)*. As such limitation did not come into play.

[21] All other issues raised were found by the learned judge to be
E irrelevant, particularly as the position in law is clear.

The Contentions of Parties, Our Analysis and Decision

[22] Section 45 deals with the management fund. It provides as follows:

> 45(1) The management corporation shall establish a management fund
F sufficient in the opinion of the management corporation to meet the administrative expenses as may be incurred for the purposes of controlling, managing and administering the common property, paying rent, rates and premiums of insurance and discharging any other obligation of the management corporation.
>
G 45(2) …

[23] Section 45(3) provides *inter alia*, that for the purposes of establishing and maintaining the management fund, the management corporation at general meeting raise the amounts by levying contributions on the proprietors in proportion to the share units.

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> 45(3) Subject to section 41A, for the purpose of establishing and maintaining the management fund the management corporation may at a general meeting:
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> (a) determine from time to time the amount to be raised for the purposes mentioned in subsection (1);

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(b) raise the amounts so determined by levying contributions on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks; and

(c) determine the amount of interest payable by a proprietor in respect of late contributions which shall not exceed the rate of ten per cent per annum.

[24] Section 45(4) allows for an application on behalf of a proprietor of a parcel or by a prospective purchaser of a parcel offered for sale of the quantum payable whereupon the management corporation is to issue to that person a certificate certifying the amount determined pursuant to the amounts set or agreed upon at general meeting, as being the contributions required of the proprietor. It also stipulates the time and manner of payment of the amount determined and other matters as specified in (c) to (f) of subs. (4). Such a certificate issued by the management corporation is stipulated to amount to conclusive evidence of the matters sought therein.

45(4) On application by or on behalf of a person who is a proprietor of a parcel, or by or on behalf of a prospective purchaser of a parcel that is offered for sale, or by or on behalf of the chargee or prospective chargee of a parcel, the management corporation shall issue to that person a certificate certifying:

(a) the amount determined, pursuant to subsection (3), as the contributions of that proprietor;

(b) the time and manner of payment of the amount determined by it pursuant to that subsection;

(c) the extent, if any, to which the contribution has been paid;

(d) the amount (if any) then recoverable by the management corporation in respect of the parcel pursuant to subsection 43(5);

(e) the sum standing to the credit of the management fund and the amount out of that fund committed or reserved for any expenses already incurred by the management corporation; and

(f) whether or not the management corporation has incurred any expenditure or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the proprietor of the parcel under any provision of this Part and, if so, the estimated amount of the expenditure or the general nature of the repairs, work or act, and as against the management corporation and in favour of any person (including the member) relying in good faith on such certificate that certificate shall be conclusive evidence of the matters certified herein.

A (5) Any contribution levied under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered as a debt from a proprietor of, or his successor in title to, the parcel.

B Section 45(5A) …

Section 45(6) For the purposes of subsection (5) the word 'proprietor' shall include the person for the time being receiving the rent of the parcel, whether as agent or trustee or as receiver, and who would receive the same if the parcel were let to a tenant.

C **[25]** It is not in dispute that neither Benchmark nor Brightvite sought any such clarification or certificate as prospective purchasers. They only sought to raise this issue in court in response to the claim by the management corporation. That must beg the question why they failed to do so. The learned judge did not therefore err when she concluded that this allegation D of failing to levy contributions in proportion to the share units was not *bona fide* and very much an afterthought. She cannot be said to be plainly wrong in her conclusion and there is accordingly no basis for appellate intervention. With respect, we concur with her decision on this point.

[26] It was submitted for the appellants that the learned judge erred when E she held that there had been no request for a statement of account because Metroplex had sought such a statement of account from the management corporation on 11 April 2014 but to no avail. However, the learned judge was referring to a query from Brightvite or Benchmark and not Metroplex, which is not a party to the present appeals. That query can have no bearing F on Brightvite or Benchmark and certainly does not afford a defence as to their late or last minute contention that the maintenance charges are not in accordance with the share units.

[27] The crux of the defence however relates to ss. 45(5) and (6). Section 45(5) provides that any contribution levied in accordance with s. 45(3), G namely in proportion to the share unit/s, becomes due and payable on the passing of a resolution to that effect by the management corporation and may be recovered as a debt from:

(a) a proprietor; or

H (b) his successor in title to the parcel/s.

Subsection 6 provides that the word 'proprietor' includes:

(a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant; or

I (b) a purchaser to be duly registered as a proprietor.

[28] Therefore, both a registered proprietor of a unit as well as any purchaser who is to be duly registered as a proprietor may be held liable for a debt arising as a consequence of a failure to pay management fees due and owing.

[29] It was contended for Brightvite and Benchmark that sub-s. 6, by referring to both the proprietor and his successor in title, enables the management corporation to claim the proprietor's contribution from the proprietor and the contribution separately due from the successor in title from the latter. It did not, it was maintained impose an obligation on the successor in title to pay the debts of the proprietor.

[30] A perusal of the section warrants the construction that the sum due and owing may be recovered as a debt from a proprietor of the subject parcel or the successor in title to the proprietor of the subject parcel.

[31] In other words, the section envisages that the debt may be recovered from two 'parties' as it were, namely the existing proprietor or the proprietor's successor in title. But the section clearly refers to one and the same debt, that debt being the sum outstanding as management fees. In other words, that single debt is recoverable from either the proprietor or the proprietor's successor in title. The section does not provide that the debt is divisible between the proprietor and the successor in title in accordance with the point at which acquisition took place. That is not a tenable construction to adopt in view of the clear and unambiguous meaning of the subsection. We are not therefore persuaded by this argument.

[32] By way of a supplemental submission, it was also contended for Brightvite and Benchmark that both entities were separate and disparate from Metroplex. Section 41A, it was contended, envisaged contributions as being payable by a proprietor to the management corporation for the management and proper maintenance of common property and to keep the subject units in a state of good and serviceable repair. As it was Metroplex that had acquired or enjoyed the benefit of the 30 units at the material time, Brightvite and Benchmark could not be held liable because these entities did not, at the material times enjoy any maintenance in respect of the relevant condominium units. Reference was also made to s. 55A which provides that where 'a proprietor' fails to pay the relevant contributions demanded he or it is guilty of an offence and liable on conviction to a fine. This too it was contended meant that only Metroplex could be liable or guilty of an offence.

[33] In summary, it was the appellants' contention that they as purchasers of the units from Metroplex could not become liable for a service that was performed for the benefit of the earlier proprietor and which they had not had the benefit of.

[34] We did not have considerable difficulty in dismissing this argument. This is because the provisions of s. 45(5) and (6) are, as the learned judge described them, 'crystal clear'. As stated earlier, a perusal of the section shows that Parliament has expressly provided for a debt in respect of management fees for services rendered are separately recoverable as debts from either the proprietor or its successor in title. In this context, sub-s. 6 clearly provides that a "purchaser to be duly registered as a proprietor" is to be considered a "proprietor" for the purposes of recovery of such a debt. Applied to the instant case, it simply means that Brightvite and Benchmark are liable for the debts, notwithstanding that Metroplex was the registered proprietor for some or most of the period in respect of which the debt arose. Such statutory provision is express and cannot be ignored.

[35] It simply does not bear the construction that the appellants seek to have this court adopt. It would be perverse to adopt the construction proposed by the appellants given the clear and unambiguous words utilised. The section and relevant subsections can be read literally as this accords with the purpose of the section, namely to ensure that the management corporation recovers monies unpaid by proprietors or future proprietors of units, so as not to make all the other unit owners subsidise the debt incurred. This would amount to a considerable prejudice to the other unit owners. Therefore, the burden has been statutorily placed on impending purchasers.

[36] To ensure that they are safeguarded, the earlier s. 45(4) allows for a certification from the management corporation as to the specific sum due and owing and recoverable as a debt. This allows any prospective purchaser to make the relevant enquiries before deciding to make the purchase. It enables the prospective purchaser to be cognisant of the total debt, if any, outstanding as being a further quantum to be considered in negotiating and finalising the purchase price.

[37] In the instant case, at least one of the entities, Benchmark ought to have been cognisant of this debt, as its majority shareholder holding 998 out of 1000 shares, Madam Lim Siew Kim was at all material times a director of Metroplex.

[38] Our reasoning is further bolstered by the decision of the High Court in *Sri Wangsaria Management Corporation v. Yeap Swee Oo @ Yeap Guan Cheng* [2009] MLJU 1461. Here too the subsequent purchasers refused to pay arrears of maintenance charges for the period prior to vacant possession, denying all liability for such arrears. The learned judge in that case held as follows:

> ... [18] Section 45(5) allows the Plaintiff to recover outstanding contributions levied under section 45(3) from either a proprietor or his successor-in-title. In my opinion section 45(5) allows the Plaintiff to recover from a proprietor, or in the event that the proprietor is no longer a proprietor as defined under s.4, then the Plaintiff may recover the outstanding contributions from the successor in title. By section 45(6) the Plaintiff may even recover outstanding contributions from 'a purchaser to be duly registered as a proprietor' ie persons who are not 'proprietors' within the meaning under section 4. To my mind, these provisions show the intention of the legislature that neither a proprietor nor a successor in title nor that category of 'proprietor' under s.45(6) may evade the obligation to pay contributions.

[39] This accords with our construction and reasoning above. (See also *De Tropicana Management Corporation v. South Malaysia Industries Bhd* [2014] 1 LNS 364 which also followed *Sri Wangsaria* and *Singapore Development* (below).

[40] We are also fortified in our reasoning by the Singapore cases of *Andrew Loh & Anor v. Management Corporation Strata Title No 082* [1986] 1 LNS 72; [1987] 1 MLJ 102 where their s. 34(7) is in *pari materia* with our s. 45(5) of the Act. In that case, although the sale to the new owners was completed on a certain date and the transfer registered subsequently some seven months later, it was held that the new owners were subsidiary proprietors and liable to pay outstanding maintenance charges by virtue of a specific statutory provision in their Act.

[41] This position was also reiterated in the earlier Singapore Court of Appeal case of *Singapore Developments (Pte) Ltd v. Management Corporation Strata Title No 446* [1991] 2 SLR (R) 733.

[42] For these reasons, we are satisfied that the learned judge did not err in law in her conclusions. Again there is no requirement for appellate intervention.

[43] It was also sought to be argued that the management corporation was dishonest in making a claim against Metroplex *vide* the filing of the proof of debt form and at the same time making claims from both Brightvite and Benchmark. To our minds, the filing of the claim *vide* the proof of debt form does not preclude the MC from seeking recovery against the appellants particularly when the debt remains unpaid to date *vis a vis* Metroplex. In point of fact, the liquidator has taken the position that the claim is still subject to verification and confirmation. The filing of the proof of debt form against Metroplex does not operate as an estoppel against recovery of the debt from the appellants in light of the express statutory provisions of s. 45(5) and (6) of the Act.

[44] The issue of limitation was also raised by the appellants. However, we would concur with the learned trial judge that the payment of management charges amounts to a running account such that limitation does not come into play.

[45] In all these circumstances, we are satisfied that the learned judge did not err on the facts or in law in arriving at her decision in respect of both these appeals. There is no basis for appellate intervention. We therefore affirm the decision of the learned judge and dismiss both appeals with costs of RM20,000 subject to allocatur. The deposits are refunded.